

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

CARLOS HERNANDEZ §
v. § CIVIL ACTION NO. 5:08cv160
WARDEN DAVID HUDSON, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Relator Carlos Hernandez, proceeding *pro se*, filed this petition for the writ of mandamus under 28 U.S.C. §§1361 and 1651 asking that the Court issue a writ of mandamus against David Hudson, the Warden of the Telford Unit. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Hernandez argued that Warden Hudson has a “ministerial duty” to act upon complaints of misconduct against officials at the Telford Unit and to uphold rules prohibiting officers from mistreating prisoners. After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed, explaining that federal district courts do not have jurisdiction to issue writs of mandamus against state officials. The Magistrate Judge also recommended that a request by Hernandez to consolidate this petition with another pending civil action be denied. Hernandez did not file objections to this Report; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the Relator's application for the writ of mandamus be and hereby is DISMISSED with prejudice as frivolous. It is further

ORDERED that the Relator's motion to consolidate this civil action with cause no. 5:08cv161, styled Perez v. Hudson, is DENIED. Finally, it is

ORDERED that any and all other motions which may be pending in this cause are hereby DENIED.

SIGNED this 20th day of April, 2009.



DAVID FOLSOM
UNITED STATES DISTRICT JUDGE